# **CITY OF EL PASO, TEXAS AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** 

Airport

**AGENDA DATE:** 

January 8, 2013

**CONTACT PERSON:** 

Monica Lombraña A.A.E., (915) 780-4793

**DISTRICT(S) AFFECTED:** 

**All Districts** 

#### SUBJECT:

APPROVE a resolution authorizing the City Manager to sign a Lessor's Approval of Assignment of the General Aviation Commercial Ground Lease by and between the City of El Paso ("Lessor"), Dr. S. Donald Phifer ("Assignor") and Pak West Airlines, Inc. dba Serra West Airlines ("Assignee") for the following described property: Lot 22, and the West 1/2 of Lot 23, Block 4. El Paso International Airport Tracts, Unit 2, El Paso County, Texas and municipally known and numbered as 7325 Boeing Dr., El Paso, Texas.

### BACKGROUND / DISCUSSION:

The City of El Paso ("Lessor") entered into a Non-Commercial Aviation Ground Lease Agreement dated August 1, 1962 between the Lessor and Farah Manufacturing Company, Inc., which was subsequently assigned to Southwest Air Rangers on October 21, 1976; which was assigned to Dr. S. Donald Phifer, on July 12, 1983. The lease was restated with an effective date of October 6, 2009, and Dr. S. Donald Phifer, ("Assignor") desires to execute a Lessor's Approval of Assignment with Pak West Airlines, Inc. dba Serra West Airlines and Pak West Airlines, Inc. dba Serra West Airlines will agree to assume Assignor's obligations under the Lease. Pak West Airlines is a charter airfreight carrier. Lease Data: Area = 30,000 Sq Ft // Rental Rate/Sq Ft = \$0.45 //Annual Rental = \$13,500.00

In addition, Pak West Airlines, Inc. dba Serra West Airlines is a current lessee of the Airport having entered into a General Aviation Non-Commercial Ground Lease with Lessor on April 16, 2011 for the property municipally known and numbered as 7615 Boeing Dr., El Paso, Texas.

#### PRIOR COUNCIL ACTION:

On August 1, 1962, Council approved a lease with Farah Manufacturing Company, Inc. On October 21, 1976, Council approved the assignment of the Farah Lease to Southwest Air Rangers On July 12, 1983, Council approved the assignment of the Southwest Air Rangers lease to Dr. S. Donald Phifer,

On October 6, 2009, Council approved the restated lease with Dr. S. Donald Phifer,

# AMOUNT AND SOURCE OF FUNDING:

N.A. this is a revenue producing Lease

**BOARD / COMMISSION ACTION:** 

N/A

**DEPARTMENT HEAD:** 

Monica Lombraña A.A.E.

**Director of Aviation** 

### RESOLUTION

# BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Lessor's Approval of Assignment of the General Aviation Non-Commercial Ground Lease by and among the City of El Paso ("Lessor"), Dr. S. Donald Phifer ("Assignor") and Pak West Airlines, Inc. dba Sierra West Airlines ("Assignee") covering the following described property:

Lot 22 and West ½ of Lot 23, Block 4, El Paso International Airport Tracts, Unit 2, El Paso, El Paso County, Texas, commonly known as 7325 Boeing Drive, City of El Paso, El Paso County, Texas.

Dated this day of	2012.		
	CITY OF EL PASO		
	John F. Cook Mayor		
ATTEST:			
Richarda Duffy Momsen City Clerk			
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:		
Theresa Cullen Deputy City Attorney	Monica Lombraña, A.A.E. Director of Aviation		

STATE OF TEXAS	§	
	§	LESSOR'S APPROVAL OF ASSIGNMENT
COUNTY OF EL PASO	8	

WHEREAS, the City of El Paso ("Lessor") entered into a Restated General Aviation Non-Commercial Ground Lease effective October 6, 2009 ("Lease"), between Lessor and Dr. S. Donald Phifer ("Assignor"); for the property legally described as:

Lot 22 and West ½ of Lot 23, Block 4, El Paso International Airport Tracts, Unit 2, El Paso, El Paso County, Texas, commonly known as 7325 Boeing Drive, City of El Paso, El Paso County, Texas ("Premises").

**WHEREAS**, Assignor now desires to assign all of its one hundred percent (100%) interest in the Lease.

**NOW THEREFORE,** in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. <u>CONSENT TO ASSIGNMENT</u>. Lessor hereby approves and consents to the assignment of the Lease from Assignor to Pak West Airlines, Inc., a Texas Corporation ("Assignee"), on the condition that Assignee assumes and becomes liable to pay any and all sums owing or becoming due Lessor under the terms of the Lease from and after the effective date of the assignment of the Lease to Assignee, and upon the further condition that Assignee agrees to accept and abide by all the terms, covenants, and conditions of the Lease.
- **PROOF OF INSURANCE AND INDEMNIFICATION.** Assignee has provided a certificate of insurance to evidence compliance with the insurance requirements of the Lease and expressly agrees to be bound by the indemnification provisions contained in the Lease.
- **GUARANTOR.** Assignor is released and discharged by Lessor from all rights, privileges and obligations under the Lease first arising and accruing from and after the effective date of the assignment of the Lease and Lessor and Assignee each hereby acknowledges that, as of the effective date of the assignment, Assignee enjoys all such rights and privileges and is responsible for satisfying all such obligations the same as if the Lease had originally been executed between Lessor and Assignee.
- 4. <u>SECURITY DEPOSIT</u>. Prior to the effective date of this Lessor's Approval of Assignment, Assignee shall tender to Lessor an irrevocable letter of credit, or other surety acceptable to the Director ("Security Deposit") in an amount equal to three (3) months of Ground Rental to guarantee the faithful performance of Assignee of its obligations under this Lease and the payment of all Ground Rental due hereunder. Assignee shall be

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obligated to maintain such Security Deposit in effect until the expiration of eighteen (18) consecutive months from the Effective Date of this Assignment during which Assignee commits no Event of Default under Section 10.02 of this Lease. Such Security Deposit shall be in such form as shall be acceptable to Lessor in its reasonable discretion. Lessor's rights under this Section shall be in addition to all other rights and remedies provided to Lessor under this Agreement.

- 5. <u>RATIFICATION OF LEASE</u>. Except as expressly modified herein, no provision of this consent alters or modifies any of the terms and conditions of the Lease; all other terms and conditions of the Lease shall remain in full force and effect.
- **6. ADDRESS FOR NOTICE.** Notices to Assignee and Assignors shall be sufficient if sent by certified mail, postage prepaid, addressed to:

**ASSIGNOR:** 

Dr. S. Donald Phifer 1837 Paseo Real El Paso, Texas 79936

**ASSIGNEE:** 

Pak West Airlines, Inc. dba Sierra West Airlines

8191 Laughlin Road Oakdale, California 95361

- 7. <u>AUTHORIZED REPRESENTATIVE</u>. The persons signing this Lessor's Approval of Assignment on behalf of the Assignee, Assignor, and Guarantor represent and warrant that they have the legal authority to bind the Assignee, Assignor or Guarantor, respectively, to the provisions of this Lessor's Approval of Assignment.
- **8. NON-WAIVER.** The Lessor's Approval of Assignment hereby given by Lessor shall not end the need for Lessor's consent for any future assignments.
- 9. <u>EFFECTIVE DATE</u>. The Effective Date of this Lessor's Approval of Assignment will be , 2012.

APPROVED THIS	day of	, 2012.
		LESSOR: CITY OF EL PASO
		Joyce A. Wilson City Manager
APPROVED AS TO FORM:		APPROVED AS TO CONTENT:
		Mouica Sombravia
Theresa Cullen Deputy City Attorney		Monica Lombraña, A.A.E. Director of Aviation
LES	SSOR'S ACKNO	OWLEDGEMENT
THE STATE OF TEXAS )		
COUNTY OF EL PASO )		
This instrument was ack Joyce A. Wilson as City Manag		re me on this day of, 2012, by f El Paso, Texas (Lessor).
My Commission Expires:		Notary Public, State of Texas

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

By: Dr. S. Donald Phifer
Title: Dr. S. Donald Phifer

ACKNOWLEDGMENT ASSIGNOR

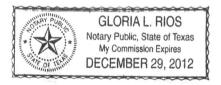
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STATE OF	16	XAS	)
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<b>COUNTY OF</b>	91	1450	

This instrument was acknowledged before me on this 3 day of De Umber 2012 by Combined by Las Owner of Dr. S. Donald Phifer (Assignor).

Notary Public, State of

My Commission Expires: 12. 79. 12

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]



ASSIGNEE: PAK-WEST AIRLINES, INC. DBA SIERRA WEST AIRLINES By: *⋖* Printed Name: **ACKNOWLEDGMENT ASSIGNEE** This instrument was acknowledged before me on this 12 day of DCLM blz 2012 by Lendra Political April Decrotions of Pak West Airlines, Inc. dba Sierra MARIA GOMEZ

Notary Public, State of Texas My Commission Expires 2-13-2016

STATE OF 1

COUNTY OF

West Airlines (Assignee).

My Commission Expires:

2016